

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEFFREY WELKER,

Defendant.

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8:09CR109

MEMORANDUM AND ORDER

This matter is before the court on the defendant's motion to vacate under [28 U.S.C. § 2255](#). Filing No. [66](#). Under Rule 4 of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court must perform an initial review of the defendant's § 2255 motion. See *Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 4(b) (2011 Ed.). The rules provide that unless "it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to a charge of conspiracy to distribute methamphetamine in violation to [21 U.S.C. §§ 841\(a\)\(1\)](#), 846, and possession of a firearm during drug trafficking offense in violation to [18 U.S.C. § 924\(c\)](#). Filing No. 24 (text minute entry). The defendant was sentenced to 144 months of imprisonment. Filing No. [40](#). In his § 2255 motion and brief, the defendant alleges that he received ineffective assistance of counsel for counsel's failure to fully and adequately advise and explain to him the terms and conditions of his plea agreement. Filing No. [67](#). The defendant alleges that he did not assent to the plea agreement knowingly, voluntarily, and intelligently. *Id.* He also alleges that his counsel was ineffective for advising him to plead guilty before thoroughly

investigating the case and did not adequately explain the nature of the criminal charges. *Id.* Finally, the defendant alleges that his counsel failed to object to the § 924(c) charges and thus failed to object to the court's sentence calculations. *Id.*

On initial review, the court finds that it does not plainly appear that the defendant is entitled to no relief, and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis of the record and briefs, or (b) whether an evidentiary hearing is required. *See Rules Governing Section 2255 Proceedings for the United States District Courts*, Rule 8(a), (2011 Ed.).

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motion within 21 days of the date of this order.
3. Defendant's motion for leave to file his § 2255 motion in excess of the page limit Filing No. [68](#), is granted.

DATED this 15th day of July, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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